

**Officer Involved Shooting of Marcelo Luna**  
**Los Angeles Police Department**

**Officer Jonathan Johnson, #37836**

**Officer Jennifer Nodes, #38200**

**J.S.I.D. File #16-0417**



**JACKIE LACEY**

**District Attorney**

**Justice System Integrity Division**

**October 17, 2017**

## **MEMORANDUM**

TO: COMMANDER ROBERT A. LOPEZ  
Los Angeles Police Department  
Force Investigation Division  
100 W. First Street, Suite 431  
Los Angeles, California 90012

FROM: JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Marcelo Luna  
J.S.I.D. File #16-0417  
F.I.D. File #F057-16

DATE: October 17, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 19, 2016, fatal shooting of Marcelo Luna by Los Angeles Police Department (LAPD) Officers Jennifer Nodes and Jonathan Johnson. It is our conclusion that Officers Nodes and Johnson acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting on August 19, 2016, at approximately 2:04 a.m. The District Attorney Response Team responded and was given a briefing and a walk-through of the scene.

The following analysis is based on reports submitted to this office by detectives with the LAPD Force Investigation Division. Officer Nodes' compelled statement was considered as part of this analysis. Officer Johnson's compelled statement was not considered as part of this analysis.

### **FACTUAL ANALYSIS**

On August 19, 2016, at 1:10 a.m., uniformed LAPD Officers Jennifer Nodes and Erik Helmstetter were on patrol in a marked black and white police vehicle travelling west on Delongpre Avenue at Hobart Boulevard. An unknown man stopped his vehicle next to the officers and pointed south on Hobart Boulevard.<sup>1</sup> A man, later identified as Marcelo Luna, was walking in the middle of Hobart Boulevard one block south from the officers' location. Helmstetter turned onto Hobart Boulevard and headed toward Luna.

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<sup>1</sup> The male driver spoke to the officers in Spanish. Nodes and Helmstetter do not speak Spanish and did not understand what he was saying to them.

Nodes gave several “chirps” from the patrol vehicle’s siren causing Luna to move onto the east sidewalk. As the officers slowly passed Luna, Luna took a shooting stance and pointed an object at the officers. Nodes initially broadcast that the object was a rifle. However, Nodes observed a blade and thought it might have been a sword. Nodes updated the broadcast stating that it was an “unknown object.”<sup>2</sup> Helmstetter made a U-turn and headed toward Luna, who was now walking northbound on the east sidewalk. Helmstetter trailed behind Luna as he and Nodes tried to determine whether Luna was in possession of a rifle.

Luna was holding the object close to the front of his body, with his left hand holding the barrel and the right hand holding the area of the stock. Helmstetter illuminated Luna with the driver’s side spotlight. Nodes drew her weapon and pointed it at Luna from the lowered passenger window while repeatedly ordering him to stop. Helmstetter identified themselves as police officers over the car’s public address system and ordered Luna to stop. Luna ignored the commands and yelled “No!” “Or what?” and “I’m done with this shit!” as he continued to walk northbound. Luna aimed the object toward the other side of the street where several people were standing. Around that time, Helmstetter was able to identify the object as a rifle with an attached bayonet. Helmstetter advised Nodes and broadcast “415 man with a rifle,” requesting additional units and an airship respond to their location. Helmstetter continued to follow Luna as they waited for backup to arrive while Nodes ordered Luna to stop.

#### Statement of Officer Patricia Bowman

Uniformed LAPD Officers Jonathan Johnson and Patricia Bowman were one block east of the location when they heard Helmstetter’s backup request. Johnson and Bowman arrived southbound on Hobart Boulevard within seconds. Bowman immediately observed Luna, who was illuminated by Helmstetter’s spotlight, walking northbound on the east sidewalk carrying a rifle. Johnson stopped the patrol vehicle on the west side of the street, facing the approaching Luna.

Johnson and Bowman exited the patrol unit and took cover behind the engine block on the passenger side of their vehicle. Bowman armed herself with her service weapon while Johnson armed himself with a semiautomatic rifle. Luna was carrying the rifle at waist level with the barrel slightly raised and pointed in their direction. Bowman heard Helmstetter and Nodes commanding Luna to stop and put down the weapon. Luna replied, “No!” and continued walking northbound. As Luna approached their position, Johnson and Bowman ordered Luna to stop and put down the weapon. Luna responded, “No! Fuck you! No! I hate you all!” while looking toward Johnson and Bowman. Bowman lost sight of Luna as he walked behind a box truck parked along the east curb. Johnson and Bowman repositioned themselves to the rear passenger side of their patrol vehicle. Bowman stood behind Johnson, offset to his right.

Luna reemerged from behind the box truck, which was parallel with Johnson and Bowman’s patrol vehicle. Luna raised the rifle, and in a continuous motion, pointed it in their direction then at LAPD Officers Chas Maloch and Nicholas Grace, who had arrived behind them on Hobart Boulevard. Bowman believed that Luna was about to fire the rifle at them and she feared for her

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<sup>2</sup> The object was later determined to be a rifle with an attached bayonet.

life, and the lives of Johnson, Maloch and Grace. At that time, Bowman heard Johnson fire two rounds from his rifle. Luna fell to the ground onto his back.<sup>3</sup>



The box truck parked on the east side of Hobart Boulevard.



Looking south on Hobart Boulevard. Bowman and Johnson's vehicle is parked across from the box truck and a Ford Flex. The white cloth lying on the east sidewalk is where Luna fell after being hit by gunfire.

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<sup>3</sup> Bowman did not fire her service weapon because she did not have a clear sight on Luna from her position.



Johnson and Bowman's positions at the time Johnson fired his weapon.

It appeared to Bowman that Luna still had the rifle in his left hand once on the ground. She could only see his right hand. Bowman ordered Luna to let go of the weapon and show his hands. Luna did not comply. Johnson also gave Luna commands. Johnson began organizing an arrest team and directed one of the arriving officers to bring a police vehicle to their location so they could use it for cover while approaching Luna. LAPD Officer Jesus Salazar entered Helmstetter's patrol unit and drove it north toward Johnson's patrol vehicle. Johnson, Bowman and several other officers took cover behind the vehicle as Salazar slowly drove it toward Luna. Luna was taken into custody and a rescue ambulance was called to the scene. Bowman did not hear a third gunshot.

#### Compelled Statement of Officer Jennifer Nodes

Nodes, like any individual, possesses a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against herself. Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285.

The LAPD orders officers who are involved in an officer involved shooting incident to submit to questioning concerning the performance of their official duties, and ordered Nodes to do so in the present case. Officer Nodes was interviewed by FID detectives on August 19, 2016, regarding her actions during this officer involved shooting. Because the LAPD compelled Nodes to participate in these interviews, Nodes' statements cannot be used against her in a criminal proceeding, nor can any material derived from the compelled interviews be used against her. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara*



(2009) 45 Cal.4<sup>th</sup> 704, 715. Further, because these compelled statements are part of Nodes' police personnel file, the statements are confidential and may not be disclosed absent an evidentiary showing and court order. Penal Code section 832.7.

[REDACTED]

[REDACTED]

#### Statement of Officer Erik Helmstetter

Upon exiting the patrol vehicle, Helmstetter took cover at the front passenger side of the box truck as Nodes went to the rear of the vehicle. Helmstetter's position placed him in a possible crossfire situation with officers to his north, so Helmstetter moved to the rear of the truck. Helmstetter observed Nodes taking cover behind the Ford Flex and moved next to her. At that time, Helmstetter observed Luna lying on his back and he appeared to be unconscious. Helmstetter was unaware that Nodes had fired her service weapon. Helmstetter observed the arrest team approach and take Luna into custody.

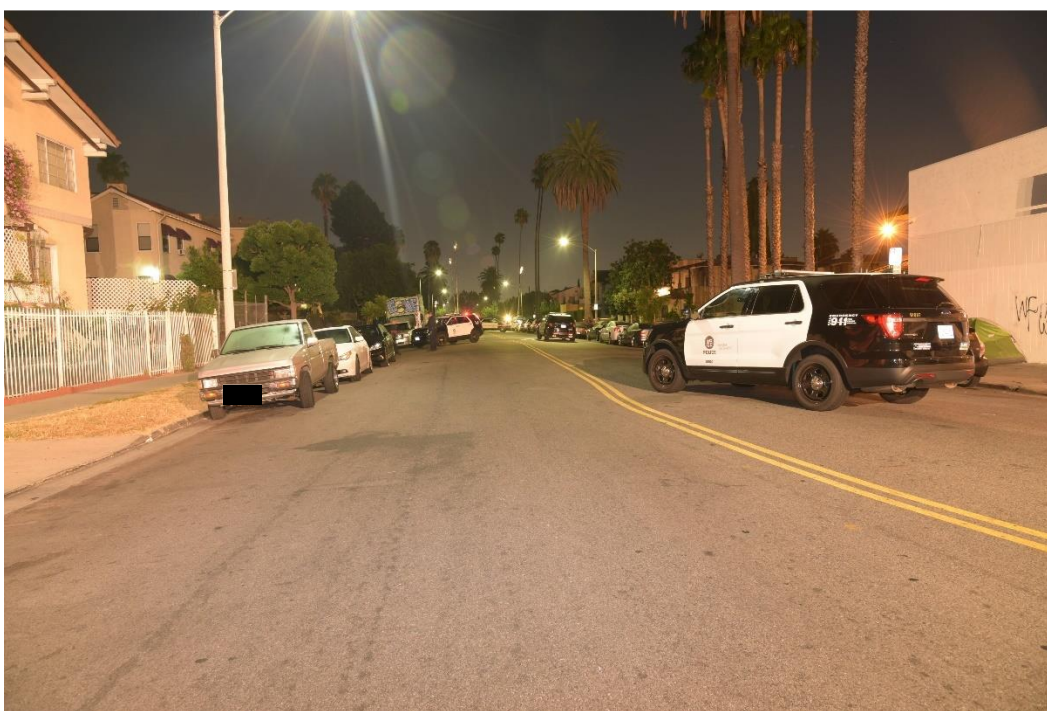
#### Statement of Officer Nicholas Grace

Uniformed LAPD Officers Nicholas Grace and Chas Maloch responded southbound onto Hobart Boulevard. Grace observed Luna walking northbound on the east sidewalk, holding a rifle parallel to the ground with the barrel facing westbound toward the street. Grace lost sight of Luna when he walked behind cars parked along the east curb. Grace heard two gunshots as he exited his vehicle. He did not know who fired the shots. Parked vehicles obstructed Grace's view of Luna on the ground and he could only see one of Luna's feet. Several officers ordered Luna to "Show me your hands!" multiple times. Luna stated, "You shot me." Additional commands were given to Luna. At that time, Grace heard a third gunshot. He did not see who fired their weapon. After the third shot, officers approached Luna behind a police vehicle and took him into custody.

### Statement of Officer Chas Maloch

Maloch observed officers holding Luna at gunpoint as he turned southbound onto Hobart Boulevard. Luna was holding a rifle and pacing back and forth on the east sidewalk. He was holding the rifle with the barrel by his hip and raised slightly in the air toward Bowman and Johnson.

Maloch stopped his police vehicle north of Luna and the other officers. Maloch exited and took cover behind the driver's door. He drew his service weapon and pointed it at Luna. Officers south of Maloch were ordering Luna to stop and drop his weapon. Luna walked northbound behind a parked vehicle and Maloch heard two gunshots. Maloch moved next to Grace at the passenger door. Maloch observed officers create an arrest team and approach Luna behind the police vehicle and take him into custody. Maloch did not hear the third gunshot.



Looking south on Hobart Boulevard. In the foreground is Maloch and Grace's police vehicle. Further south is Johnson and Bowman's vehicle. Nodes and Helmstetter's vehicle is on the east side of the street where Salazar drove it when the arrest team approached Luna.

### Digital In-Car Video

Nodes and Helmstetter's police vehicle was equipped with digital in-car video. The footage shows Helmstetter making a U-turn and slowly following Luna north on Hobart Boulevard. Luna is holding a rifle across his body at waist level with the barrel pointed west into the street. At one point, Luna points the rifle toward several individuals standing on the west side of the street. Nodes and Helmstetter repeatedly identify themselves as the police and order Luna to stop. Luna never acknowledges the officers' presence. Johnson and Bowman's vehicle arrives southbound and stops across from the box truck and Ford Flex. Bowman is heard giving Luna commands. Helmstetter stops the police vehicle south of the truck as Luna disappears from

view. Moments later two gunshots can be heard. Nodes and Helmstetter exit their vehicle and Nodes disappears along the passenger side of the truck. Officers are heard ordering Luna to show his hands and not to move. Luna can be heard yelling. Approximately 22 seconds after the first two gunshots, a third gunshot can be heard. Helmstetter was at the rear driver's side of the truck when the third shot was fired. Luna is not visible when any of the gunshots are heard.

There are street lights visible in the video, however, it was difficult to observe Luna unless the police vehicle's spotlight or headlights were directly on him. At the time of the third shot, Nodes was the closest officer to Luna.

#### Medical Treatment

Personnel with the City of Los Angeles Fire Department responded to the scene and declared Luna deceased.

#### Recovered Weapon



Luna was armed with a 7.62 x 39 mm caliber SKS semiautomatic rifle with an attached ten-inch bayonet. The weapon was unloaded and missing the stock. The rifle was test fired by a LAPD Forensic Science Division analyst using laboratory ammunition and determined to be functional.

#### Statement of R [REDACTED] V [REDACTED]

V [REDACTED] lives with Luna at [REDACTED] Hobart Boulevard. They have been in a relationship for three years. [REDACTED]



[REDACTED]<sup>5</sup> Luna has tried to kill himself in front of V [REDACTED] on two occasions. He has also threatened to commit “suicide by cop” stating that it would be “quick and clean” and he would not have to dirty his hands. [REDACTED]

[REDACTED]

On August 19, 2016, Luna and V [REDACTED] got into an argument about the care of their ten-month old child. Luna got dressed, packed a backpack and grabbed a bayonet. V [REDACTED] stated that the weapon was only a “knife” and that it did not have a barrel and could not be loaded. Luna left the residence.

Five minutes after Luna left, V [REDACTED] heard the “chirp” of a police siren. Moments later, she heard two gunshots. V [REDACTED] ran outside and saw multiple police officers pointing their service weapons toward the east side of the street. She could not see Luna, but assumed the officers were pointing their weapons at him.

## Autopsy Report

Los Angeles County Deputy Medical Examiner Timothy Dutra, M.D., performed a postmortem examination of Marcelo Luna on August 22, 2016. Luna sustained gunshot wounds to the left chest (which originally entered through the left arm), abdomen, the base of the right index finger and right back. Dr. Dutra indicated that when the right hand is placed to the front of the abdomen, it appears that those two gunshot injuries may be paired.

## LEGAL ANALYSIS

CALCRIM No. 505 states:

The use of deadly force in self-defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed the following:

- (1) that he or the person he was defending was in imminent danger of being killed or suffering great bodily injury;
- (2) that the immediate use of force was necessary to defend against that danger; and
- (3) that he used no more force than was reasonably necessary to defend against that danger.

“Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say that he shall not be justified in killing because he might have resorted to other means to secure his safety.” *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

5 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others." *Munoz v. City of Union City* (2004) 120 Cal.App.4<sup>th</sup> 1077, 1102.

Actual danger is not necessary to justify the use of force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon these circumstances. The right to self defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577, 580.

## CONCLUSION

The evidence examined shows that Luna [REDACTED]. [REDACTED] In the past, Luna attempted or threatened to commit suicide [REDACTED]. On one occasion, Luna expressed a desire to commit "suicide by cop" because it would be "quick and clean."

On August 19, 2016, Luna pointed a semiautomatic rifle with attached bayonet at Nodes and Helmstetter when they first attempted to make contact with him. Initially, Nodes and Helmstetter were unable to positively identify the object in Luna's hand as a rifle. Luna ignored multiple orders to stop and drop his weapon. Instead, he continued walking north and at one point aimed his rifle at unsuspecting civilians while the police were directly behind him.

Johnson and Bowman arrived on Hobart Boulevard and stopped while facing the approaching Luna. Bowman immediately observed the rifle in Luna's hands. Bowman and Johnson ordered Luna to stop and drop the rifle. Luna looked directly at the officers and stated, "No! Fuck you! No! I hate you all!" before disappearing behind a parked truck. When Luna reappeared, he pointed the rifle toward Bowman and Johnson, then at Grace and Maloch. Luna's actions placed Bowman in reasonable fear for her life, and the lives of her fellow officers. Bowman did not fire her service weapon because she did not have a clear line of fire. However, Johnson, who was standing at the very rear of their patrol vehicle, in front of Bowman, did respond with reasonable deadly force.

Nodes took cover behind the Ford Flex once Luna fell to the ground. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Nodes responded with reasonable deadly force and fired her service weapon one time in order to stop the threat. The gunshot wound to the right back is consistent with [REDACTED]  
[REDACTED]

We conclude that Officers Johnson and Nodes acted in lawful self-defense and defense of others when they used deadly force against Marcelo Luna. We are therefore closing our file and will take no further action in this matter.